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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/816,460 | 03/31/2004 | Pasha Sadri | 50269-0571 | 8403 |
| 29989 | 7590 | 09/28/2006 | EXAMINER | |
| HICKMAN PALERMO TRUONG & BECKER, LLP 2055 GATEWAY PLACE SUITE 550 SAN JOSE, CA 95110 | | | VEILLARD, JACQUES | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2165 | |

DATE MAILED: 09/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/816,460 | SADRI ET AL. | |
| | Examiner | Art Unit | |
| | Jacques Veillard | 2165 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 31 March 2004.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-27 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-27 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 31 March 2004 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

| | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/14/04; 11/07/05</u> . | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

1. This action is responsive to the applicant's communication filed on 03/31/2004.
2. Claims 1-27 are pending and presented for examination.

Information Disclosure Statement

3. The information disclosure statement (IDS) submitted on October 14, 2004 and November 07, 2005 is in compliance with the provisions of 37 CFR 1.97. It has been placed in the application file. The information referred to therein has been considered as to the merits.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The pronoun "that" recites in lines 5, 12 and 13 of claim 1; in lines 1 and 3 of claim 2; in line 2 of claim 3; in line 1 of claim 4; in lines 4 and 6 of claim 7; in line 3 of claim 8; in line 2 of claim 9; in lines 2 and 3 of claim 10; in lines 6 and 7 of claim 11, and in lines 10 and 11 of claim 27, renders the claim indefinite. The pronoun "that" is not permitted as part of the claimed language; only what is being referred by "that" should be set forth in the claim.

6. As per claims 14-26, it is unclear what applicant's intended metes and bounds of the

claims are, because incorporation by reference to another claim invokes the entire claim, which is being incorporated. Accordingly, there cannot be any inconsistency between the preamble of the claim incorporated by reference and the claim containing the incorporation. When such inconsistency exists, the claim is indefinite under 35 USC 112, second paragraph. See MPEP 2173.02. Therefore, Applicant(s) is/are advised to amend the claims by rewriting them in complete independent form containing all the limitations of the claim incorporated in order to solve the 112 rejection set forth in the claims.

Any claim not directly rejected under 35 U. S. C. 112, 2nd stands rejected due to its dependency of the base claim.

Claim Rejections - 35 USC § 101

7. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

8. Claims 14-26 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 14-26 recite "A computer-readable medium carrying one or more sequences of instructions which, when executed by one or more processors, causes the one or more processors to perform the method" (See claim 14 for illustration purposes). The term 'computer-readable medium,' as used herein, refers to any medium that provides information or is usable by the processor(s). Such medium may take many forms, including, but not limited to, non-volatile, volatile, and transmission media...Transmission media includes coaxial cables, copper wire and

fiber optics, including the wires that comprise the bus. Transmission ... media can also take the form of carrier waves, i.e., electromagnetic waves that can be modulated, as in frequency, amplitude, or phase, to transmit information signals. Additionally, transmission media can take the form of acoustic or light waves, such as those generated during radio wave and infrared data communications. Accordingly, claim(s) 14-26 is/are not limited to tangible embodiments. In view of Applicant's disclosure, specification page 17 section [0039] to page 18 section [0040] and page 19 section [0043] lines 7-10, the medium is not limited to tangible embodiments, instead being defined as including both tangible embodiments (e.g., read only memory, random access memory, magnetic disk storage media, optical storage media, flash memory services) and intangible embodiments (e.g., carrier-wave signal, infrared signals, digital signals). As such, the claim(s) is/are not limited to statutory subject matter and is therefore non-statutory.

Applicant(s) is/ are advised to amend the claims to include only the physical computer media and not a transmission media or other intangible or non-functional media. For the specification at the bottom, carrier medium and transmission media would be not statutory but storage media would be statutory. The Examiner is also suggested to amend the claims to read as: "A computer-readable storage medium"

9. Claim 27 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter, specifically directed toward software, per se.

The system as claimed is made up of 4 means, when turning to the specification page(s) 8 section [0018] through page(s) 11 section [0023] and page(s) 12 section [0025] through 13 section [0030], it is clear that each of means could be software. Therefore, the system is just

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software per se made up of means. Since the software program constituting the system is not been claimed as embodied in a computer, the claim is not directed to a statutory subject matter. Without the above, the functionality of the software cannot be realized since it is not directly accessible by computer. Therefore, the claim is rejected under the doctrine of 35 U.S.C. 101 as being non-statutory.

Prior Art Made of Record

10. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure. U.S. patents and U.S. patent application publications will not be supplied with Office actions. Examiners advises the Applicant that the cited U.S. patents and patent application publications are available for download via the Office's PAIR. As an alternate source, all U.S. patents and patent application publications are available on the USPTO web site (www.uspto.gov), from the Office of Public Records and from commercial sources. For the use of the Office's PAIR system, Applicants may refer to the Electronic Business Center (EBC) at <http://www.uspto.gov/ebc/index.html> or 1-866-217-9197.

Points Of Contact

1. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacques Veillard whose telephone number is (571) 272-4086. The examiner can normally be reached on Mon. to Fri. from 9 AM to 4:30 PM, alt. Fri. off..

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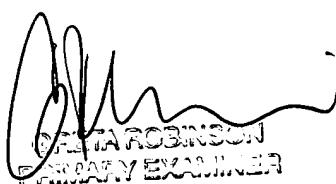
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Gaffin can be reached on (571) 272- 4146. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jacques Veillard
Patent Examiner AU 2165

September 20, 2006



DELIA ROBINSON
PATENT EXAMINER